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INFO RUEHNE/AMEMBASSY NEW DELHI 3971
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RUEHNEH/AMCONSUL HYDERABAD
RUCPDO/DEPT OF COMMERCE WASHINGTON DC
RHEBAAA/DEPT OF ENERGY WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
RUEBBEA/DEPT OF TRANS WASHDC
RHMCSUU/FAA NATIONAL HQ WASHINGTON DC
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SIPDIS

USDOC FOR ITA/MAC/OSA/LDROKER/ASTERN/KRUDD, USPTO
DEPT OF ENERGY FOR A/S KHARBERT, TCUTLER, CZAMUDA, RLUHAR
DEPT PASS TO USTR MDELANEY/CLILIEFELD/AADLER/DWATSON
TREASURY FOR OFFICE OF SOUTH ASIA MNUGENT
TREASURY PASS TO FRB SAN FRANCISCO/TERESA CURRAN
USDA PASS FAS/OCRA/RADLER/BEAN/FERUS
PASS FOR DEPARTMENT CA/OCS/OCI

E.O. 12958: N/A

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SUBJECT: Boil, Boil, Toil and Trouble: New Unevenly Applied
Immigration Rules Leave Americans Stranded and Confused

¶1. Summary: The Indian Government recently implemented changes in immigration regulations without advance public notice, in apparent response to the arrest of alleged terrorist David Headley. The new regulations restrict reentry of foreign tourists holding a valid Indian visa for two months even if their visas allow multiple entries. The policy has affected those who plan on travelling regionally using India as their base. The new regulation has split families, caused flights to be missed and has created substantial anxiety among travelers. In addition, its inconsistent application has left significant numbers of travelers, including many American citizens, unsure if they leave India whether they will be allowed to reenter. Several requests by Mission elements to both central and regional authorities have so far not yielded satisfactory explanations or consistent application of the new rules. These regulatory changes have seriously inconvenienced travelers and risk making a critical dent in India's tourism and foreign business industries. End summary.

Troubled American Citizens

¶2. On November 30, 2009, the American Citizen Services (ACS) Unit in Chennai received a request for help from two American citizens who were in the process of being deported. The Americans held long term multiple entry tourist visas. They had been in India for a short time, returned to the US for a funeral, and on reentry had been told that they had returned too soon and were initially denied reentry. ACS Chennai confirmed with the Foreigners Regional Registration Office (FRRO) that this was a new regulation. Indian authorities eventually allowed the American citizens to reenter India on compassionate grounds, but cautioned ACS Chennai that they had already deported other people under these new rules. The rules had not been published, and no written regulations were provided to the Consulate. When other posts in India reached out to GOI contacts, immigration officials informed them that other points of entry were unaware of or not enforcing the new regulations.

¶3. Over the month of December, consensus about what the official rules entailed slowly emerged. Finally, over the New Year's weekend, FAQs were posted on the Ministry of Home Affairs' website (http://www.mha.nic.in/writereaddata/12622855_721_FAQ-TVisa311209.pdf) that corresponded to what the posts in India had been hearing. Under the new rules, holders of tourist visas would

have a stamp placed in their passports indicating that they must stay out of India for two months between visits. Newly issued visas in the United States had this stamp placed in them at the time of issue. People wishing to reenter before the two months had elapsed would be required to obtain special permission from an Indian Embassy, Consulate, or High Commission abroad, and then register upon their re-arrival in India. At the same time, many people were told that their current visa category was inappropriate for the activities they wished to undertake. Specifically, people who had come to do volunteer work were told they should not be on tourist visas.

14. This sudden change in regulation caught many travelers unaware and left people stranded all over Asia. In one instance, a US Army officer's father had come to visit his son who was stationed in India. After a brief trip to Sri Lanka, they encountered great difficulty in obtaining the required permission from the Indian High Commission in Colombo to re-enter the country. In another case, two college-aged children came to India during their winter break to visit their parents (who had long-term employment visas). The family had plans to take a short trip together to Thailand. However, as they were leaving the country, Indian immigration officials advised the children that they would not be granted reentry to India even though they had been in the country for only a few days. As the rules received more and more publicity through Warden Messages and media reports, ACS received and continues to receive numerous panicked calls and email messages from American citizens wanting to know how these rules would be applied. These new regulations have significantly impacted the workload for American Citizens Services mission-wide. FRRO in Chennai estimates that at least 10 - 15 individuals on each incoming flight are in

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violation of the new regulations. The lack of published rules and the fact that the granting of reentry permission is up to the discretion of each individual Indian Embassy, Consulate, or High Commission, as well as the uneven application of the new regulations, makes it impossible for people to be sure if they will be able to return.

Inconsistent Application of Visa Policy

15. While the rules are meant to cover all tourist visas, the actual application of the new rules has been inconsistent. In one instance, a large extended American family was traveling to Sri Lanka after visiting India. Three members of the party had their visas stamped that they would require permission to reenter; the rest of the party traveling with them did not - even though they were seen by the same immigration official. Two of the individuals who were told to seek permission had long term visas (which according to post's understanding should require the permission) and one had a six month visa (which, according to the regulations in place at that time, should not have required the permission). The Indian High Commission in Sri Lanka ultimately granted all of them permission to return to India and told them to register upon their return, even though their stay in India would only be three days. On their return to India, they went to the Foreigners Regional Registration Office (FRRO) to register as instructed, but officials there informed them that the office was too busy to register them and they should return a week later to complete the registration. Since they would not be allowed to leave the country without registering, waiting a week to register would have caused them to miss their flight back to the United States. When ACS called the FRRO to confirm that they would not be able to register, the FRRO told ACS that the Americans would now be able to register if they came immediately. Embassy New Delhi similarly contacted the Ministry of Home Affairs to seek clarification of the rules. (We understand the UK and other embassies and high commissions with affected citizens have made similar approaches.)

GOI Official Position and Justification for Change:

16. While the official overall policy now seems to be standardized, there have been continuing changes to the regulations and the

implementation by individual immigration offices still varies. In Bangalore, the senior immigration official told post that all foreigners holding visas valid for more than 180 days, regardless of visa category, should register with the FRRO. This rule, however, does not apply to foreigners holding Person of Indian Origin or Overseas Citizen India cards. The official further provided post with written instructions of these visa procedures. (Comment: This official was covering this office temporarily. We expect visa procedures to change with the arrival of the new officer who recently assumed duties in mid-January). End Comment.) This interpretation is consistent with the experience of one American citizen on a business visa who stayed for just seven days on her first trip to India and was not allowed to leave the country because she had not registered. This interpretation, however, is not consistent with what is happening in the rest of India. The regulations also continue to change. Recent changes in January 2010 include applying these new regulations to all tourist visas, regardless of the length of visa validity, and requiring all visa applicants to submit a birth certificate or school diploma (High School or above).

17. According to press reports, these restrictions were introduced in response to the arrest of the American citizen alleged terrorist, David Headley, who travelled frequently to India on a business visa in the run-up to the Mumbai terror attacks. Home Minister P. Chidambaram has attempted to calm public criticism of tougher visa laws by announcing an overhaul of visa regulations aimed at "facilitating legitimate travelers and strengthening security." Other derogatory visa cases, involving Chinese workers employed in India, while on tourist visas, have further motivated the Home

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Ministry to introduce new rules.

18. The Ministry of Home Affairs has stated publicly that legitimate travelers will not be harmed and exceptions can be made in extraordinary cases. The Home Minister also stated his goal to increase tourism in India from 5 million to 50 million arrivals per year. Contrary to these stated goals, current regulations have severely inconvenienced travelers and have the potential to put a serious dent in India's tourism and foreign business industries (septel).

19. Comment: The abruptly and inconsistently implemented regulatory change risks affecting India's tourism as well as business climate. A similar, hurriedly crafted visa policy requiring employment visas for certain holders of business visas in October 2009 caused significant inconvenience to several U.S. businesses operating in India (including American contractors working on the New Consulate Compound in Mumbai and defense contractors working in South India.) The poor handling of changes in the visa policies highlights the limited capacity of the Indian bureaucracy to act quickly, consistently, and fairly on a matter of significant economic, commercial and social importance. The flow of information from the central government to local offices is not uniform, and implementation is inconsistent. India wants to increase its tourism ten-fold from its current five million arrivals per year in the near future. This goal would be better served by less disruptive visa policies. End Comment.

110. This cable has been cleared by Mission India.

Simkin